IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-126

CHARLES R. DUDLEY and
DELORES S. DUDLEY,

Appellants,

v.

NEBRASKA STATE BANK,

Appellee.

On Appeal From the Supreme Court of Nebraska

JURISDICTIONAL STATEMENT

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THE OPINIONS BELOW

The Memorandum Decision of the Supreme Court of Nebraska has not yet been reported. A copy of said opinion is attached hereto as Appendix "A". It is believed that the opinion will soon be reported in Volume 278, North Western Reporter, 2d Series.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

This is a civil action, phases of which have been heard on three separate occasions by the Supreme Court of Nebraska. The issue at the last of three jury trials was to ascertain the amount of damages due to these appellants by reason of the wrongful seizure of their property by the appellee bank. The jury verdict was for the appellee bank. After trial, these appellants failed to file a motion for a new trial within the ten days prescribed by Section 25-1143(1) of the Revised Statutes of Nebraska. Thereafter, because of said failure to timely file, the appellants have been wrongfully deprived of their right to appeal despite the precise wording of Section 25-1912 of the Revised Statutes of Nebraska, which does not require, as a jurisdictional requirement, the filing of a motion for a new trial.

Appellants contended, at the trial court level after trial and in the Nebraska Supreme Court, that Section 25-1912 of the Revised Statutes of Nebraska was invalid on the ground that it was repugnant to the due process clause and the privileges and immunities clause of the 14th Amendment to the United States Constitution.

The judgment or decree sought to be reviewed is the ruling of the Supreme Court of Nebraska affirming the trial court's decision overruling these appellants' motions which attacked the constitutionality of Section 25-1912 and requested the trial court to permit the late filing of a motion for a new trial under Section 25-1143(1) and a simultaneously-filed motion for a new trial.

That ruling was issued on May 1, 1979 and filed on the same day. No petition for rehearing was filed.

The notice of appeal was filed in the District court of Nebraska in and for Dakota County, the Court possessed with the record, on July 18, 1979 (attached as Appendix "B").

Jurisdiction of the appeal is conferred on this Court by Title 28 of the United States Code, Section 1257(2). Baggett v. Bullitt, 377 U.S. 360, 367, 84 S.Ct. 1316, 12 L.Ed.2d 377 (Wash. 1964); Winters v. New York, 333 U.S. 507, 509 (1947); Miller v. Schoene, 276 U.S. 272, 277 (1927); Blodgett v. Silberman, 277 U.S. 1, 7 (1927); Giaccio v. Pennsylvania, 382 U.S. 399, 402 (1965).

The validity of Section 25-1912 of the Revised Statutes of Nebraska is here involved. The pertinent text of that statute is as follows:

> The proceedings to obtain a reversal, vacation or modification of judgments and decrees rendered or final orders made by the district court, including judgments and sentences upon convictions for felonies and misdemeanors under the criminal code, shall be by filing in the office of the clerk of the district court in which such judgment, decree or final order was rendered, within one month after the rendition of such judgment or decree, ... a notice of intention to prosecute such appeal signed by appellant or appellants or his or their attorney of record, ... Except as otherwise provided in section 29-2306, an appeal shall be deemed perfected, and the Supreme Court shall have jurisdiction of the cause when such notice of appeal shall have been filed, and such docket fee deposited in the office of the clerk of the district court, and after being so perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional. (Emphasis supplied.)

QUESTION PRESENTED BY THE APPEAL

The following question is presented by this appeal:

Does a state statute which purports to, but does not fully and accurately set out "the proceedings to obtain a reversal" by appeal to the Supreme Court of Nebraska, violate the due process clause and the privileges and immunities clause of the

Fourteenth Amendment to the United States Constitution?

STATEMENT OF THE FACTS OF THE CASE

The appellants in this case respectfully state that this matter has been reviewed by the Supreme Court of Nebraska on three separate occasions; that originally there was a jury trial in Dakota County, Nebraska, the issue being whether or not the bank had wrongfully taken the property of the Dudleys (appellants here); that these appellants prevailed; that the plaintiff, Nebraska State Bank, appealed; that the matter was reversed because of erroneous jury instructions (194 Neb. 1, 229 N.W.2d 559); that thereafter a second jury trial was had; that these appellants again prevailed; that the plaintiff, Nebraska State Bank, again appealed; that the Supreme Court of Nebraska sustained the trial court and dismissed the appeal (198 Neb. 132, 252 N.W.2d 277); that thereafter a third

jury trial was had as to the monetary damages sustained by the appellants here as a result of the wrongful acts of the Nebraska State Bank, that this jury trial ended in a finding by the jury that the appellants were entitled to no damages despite the previous jury finding that had been upheld by the Supreme Court that the Nebraska State Bank had in fact wrongfully taken the property of these appellants.

A copy of the Judgment entered is attached hereto and by reference made a part hereof, marked Appendix "C". Appendix "D" is the Order overruling all motions.

It was the intention of these appellants to appeal this cause for several meritorious reasons that shall not be set out herein in this brief; that a motion for new trial was not filed within ten days for the reason that during the two previous appeals, similar motions were summarily rejected.

The appeal procedure under Section 25-1912 of the Revised Statute of Nebraska was followed by the attorneys for the appellants here. That section did not mention and does not require the filing of a motion for a new trial as a prerequisite for an appeal and clearly says, "and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional." Mention of the filing of a motion for a new trial within ten days is made in a far-removed section of the Nebraska Code, 25-1143(1). After the ten days had passed, these appellants filed a motion to permit the late filing of a motion for new trial; said motion was overruled by the trial court as not having been timely filed; that these appellants had, as aforementioned, filed their notice of appeal timely, and they then asked the Supreme Court of Nebraska to either permit the late filing

of the motion for new trial, find that these appellants (Dudleys) were unavoidably prevented from timely filing a motion for a new trial, or in the alternative, to declare the section involved, 25-1912 of the Revised Statutes of Nebraska, to be so vague, indefinite, arbitrary and capricious as to be unconstitutional and further requested that said Code section be found to be a nullity.

The Supreme Court of Nebraska, in a Memorandum Opinion dated May 1, 1979 (see Appendix "A"), erroneously found that "Appellate review in civil cases is not a fundamental right guaranteed by either the due process or privileges and immunities clause of 14th Amendment to the Constitution of the United States."

A review of the procedure should be brought to the attention of this Court. In the Nebraska Supreme Court a Notice of Appeal was filed. At the same time that the Notice of Appeal was filed a Motion

for a New Trial was filed. At the same time as the two aforementioned filings, there was a Motion to Permit the Late Filing of a Motion for New Trial under Section 25-1143(1) of the Revised Statutes of Nebraska; that at the same time an Affidavit of the appellants' trial court attorney was attached in furtherance of the aforesaid Motions. These motions and filings were timely filed prior to the thirty-day period provided by Section 25-1912 of the Revised Statutes of Nebraska. The appellants here were "unavoidably prevented from filing" a timely motion for a new trial because of the incompleteness of Section 25-1912. Judge Kelly at the trial court level overruled all pending motions.

The Judge's rulings were based on this Court's rulings in several Nebraska cases and most recently the case of State v. Betts, 196 Neb. 572, 244 N.W.2d 195, which held that any motion for a new trial

not timely filed is a nullity. Appellants here contended before the Nebraska Supreme Court that the Betts case and others, because of the incompleteness of Section 25-1912, deprived these appellants and others in the same circumstances of their constitutional rights under the 14th Amendment of the Constitution of the United States and other provisions of the Constitution of Nebraska not pertinent here.

The Supreme Court of Nebraska was asked to find that the appellants here were unavoidably prevented from filing a timely notice of appeal, or in the alternative, to find that Section 25-1912 of the Revised Statute of Nebraska was so vague, indefinite, arbitrary, capricious and unreasonable that it is in violation of the constitutional provisions provided under the due process clause of the 14th Amendment of the United States Constitution, and further requested that thereafter

this cause should be remanded to the District Court, and that these appellants should be permitted to file a motion for a new trial, and if they are not awarded a new trial, to perfect an appeal and then have the constitutionally-provided right to present the matter on the merits to the Supreme Court of Nebraska. In its Memorandum Opinion the Supreme Court of Nebraska rejected the appeal on all grounds and erroneously affirmed the district court.

Said Section 25-1912 does not include any mention of the necessity to file a Motion for a New Trial in order to perfect an appeal, nor do the annotations (synopsis of what this same court has said in the past about the requirements of the section) under Section 25-1912 really set out that the requirements of Section 25-1912 are incomplete and that the wording of said section is of no value to those who would attempt to follow its procedural steps.

In a nutshell, no motion for a new trial was filed because the Nebraska Code Section 25-1143(1) which sets out the requisite for the filing of a motion for a new trial is not referred to in 25-1912; it is only under the annotations under the section regarding motions for a new trial that an appellant can be apprised that the Supreme Court of Nebraska has repeatedly said that in order to perfect and prosecute an appeal in Nebraska a motion for a new trial is necessary. The text of Section 25-1912 has been previously set out in this statement.

Section 25-1912 violates the due process clause of the 14th Amendment, which states as follows: "Nor shall any state deprive any person of life, liberty, or property, without due process of law; ..."

The due process clause of the 14th Amendment prohibits vague and indefinite

legislation. In Baggett v. Bullitt, supra, the Court said in a similar situation:

> The statute therefore fell within the compass of those decisions of the Court holding that a law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law. Connally v. General Construction Co., 269 U.S. 385; Lanzetta v. New Jersey, 306 U.S. 451; Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495; United States v. Cardiff, 344 U.S. 174; Champlin Refining Co. v. Corporation Comm'n of Oklahoma, 286 U.S. 210.

Further, in Baggett at 373, the Court said as follows:

> Well-intentioned prosecutors and judicial safeguards do not neutralize the vice of a vague law.

(See also Harris v. Younger, 281 F.Supp. 507, reversed on other grounds 91 S.Ct. 746, 401 U.S. 37, 2 L.Ed.2d 669 (D.C.Cal. 1908).)

It is clear after reading Section 25-1912 that there is no mention of the requirement of a motion for new trial. The code section violates the due process clause and the privileges and immunities

clause of the 14th Amendment to the Constitution of the United States. Those rights are circumvented by Section 25-1912 because it does not accurately set out the rules for perfecting a Supreme Court appeal in the State of Nebraska.

The section also specifically violates the privileges and immunities clause of the 14th Amendment, which states as follows:

> No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States.

Said privileges and immunities clause of the 14th Amendment specifically prohibits any state from abridging the rights and privileges of its citizens. This is set out in the case of In Re Mahon, 34 F. 525, aff'd 8 S.Ct. 1204, 127 U.S. 700, 32 L.Ed. 283 (D.C.Ky, 1888), wherein the Court said:

> This is not a grant to the citizen resident or sojourner, as an individual, or any right which he did not therefore have, but it is a

> limitation upon the power of the states, put in the federal Constitution. It is not a declaration of which privileges or immunities citizens of the United States are entitled to, but is a declaration that no state of the Union shall abridge them.

When the privileges and immunity clause speaks of rights, it means all rights.

It is not necessary under the Federal Constitution that the State of Nebraska provide for appellate review, but since it has so provided, the provisions must meet Constitutional standards.[1] The person desiring

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[1]In Griffin v. Illinois, 351 U.S. 12, 18, 76 S.Ct. 585, 590, 100 L.Ed. 891 (1955), this Court said:

> It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. See, e.g., McKane v. Durston, 153 U.S. 684, 687-688. But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty. Appellate review has now become an integral part of the Illinois trial system for finally adjudicating the guilt or innocence of a

to make the appeal is entitled to legislation that is not arbitrary, capricious or unreasonable and not vague or indefinite. No reading of Section 25-1912 of the Revisted Statutes of Nebraska would alert any prospective appellant of the duty to file a motion for a new trial within ten days. The rights of the appellants cannot be encumbered by legal traps. The section is in violation of the 14th Amendment of the Constitution.

> defendant. Consequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations. See Cole v. Arkansas, 333 U.S. 196, 201; Dowd v. United States ex rel. Cook, 340 U.S. 206, 208; Cochran v. Kansas, 316 U.S. 255, 257; Frank v. Mangum, 237 U.S. 309, 327.

THE FEDERAL QUESTION IS SUBSTANTIAL

The federal question is substantial since the Supreme Court of Nebraska should not be permitted to ignore the due process clause and the privileges and immunities clause of the 14th Amendment to the Constitution of the United States by trying to plug up a hole in a vague statute by judicial pronouncement and base its opinion for doing so on cases easily distinguishable [2] and completely ignore the pertinent cases cited by the appellants (such as Baggett v. Bullitt, supra).

The problem is not unique to these appellants. The annotations under motions

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[2] McKane v. Durston, 153 U.S. 684 (1894). Most of the cases, if not all, cited by Nebraska Supreme Court in its decision, go back to the McKane case. All McKane says is, "It is wholly within the discretion of the state to allow or not allow such a review." At p. 687. This ignores Griffin v. Illinois, supra.

for new trial show that the Supreme Court of Nebraska has refused to permit anything but a pro forma appeal in at least twenty-two cases despite the fact that the challenged statute, 25-1912, clearly says that there are only two things necessary to perfect an appeal and there is no mention of a motion for new trial.

Pertinent sections of the Revised Statutes of Nebraska are:

Ch. 25-1142 - "New trial, defined: grounds"

Ch. 25-1143 - "New trial; application when made"

Ch. 25-1144 - "New trial - motion form"

Ch. 25-1912 - "Appeal to Supreme Court: Civil and Criminal Actions: Procedure: Notice of Appeal; docketing fee: filing of transcript"

(All found in Revised Statutes of Nebraska, Reissue of 1975, Vol. 2.)

Close scrutiny of these Code sections will reveal nothing that indicates that a

motion for a new trial is mandatory prior to appeal, and in fact 25-1912, the section under attack here, clearly states the opposite in that it says only the notice and docket fee are jurisdictional. There are four pages of annotations after 25-1912 and none of them apprise a reader that you must first file a motion for a new trial to get a meaningful appeal.

Let us review what actually happens and did happen here when no motion for a new trial is filed in Nebraska.

1. A decision is reached at the trial court level.

2. No "Motion for New Trial" is filed in ten days.

3. A Motion for New Trial is filed after ten days (but is considered a "nullity" (see Pallas v. Dailey, 169 Neb. 277, 99 N.W.2d 6)).

4. A "Notice of Appeal" is timely filed.

5. The Nebraska Supreme Court accepts the "Appeal" saying, "We have jurisdiction, but appellant has failed to 'preserve for review the trial errors.'"

6. The Nebraska Supreme Court will then "examine the record only for the purpose of determining whether or not the judgment is supported by the pleadings."

7. This is the same as no appeal at all. It is an automatic affirmance.

There is no statutory support for this procedure. It can't be found in 25-1142, 25-1143, 25-1144, 25-1912 or anywhere else in the Revised Statutes of Nebraska. It cannot be ascertained even by considering all four sections at the same time. Section 1143 allows one exception, "permitting the filing of a motion for a new trial after 10 days where party was 'unavoidably prevented'" from a timely filing. Despite a series of cases that showed good reasons for the delay, the annotations show no case which allowed a late filing for any reason;

it is only window dressing.

These appellants readily admit that any procedure to preserve trial errors is logical and understandable[3] but strongly urge that it cannot be set up by the Nebraska Supreme Court trying to plug statutory holes by judicial pronouncements.

In the case of Giacco v. Pennsylvania, supra, this Court reversed the Supreme Court of the State of Pennsylvania, which had sustained the intermediate appellate court which had held that the Pennsylvania statute assessing court costs was constitutional. The United States Supreme Court held that the 1860 act violated the due process clause because of vagueness and stated that regardless of whether the act is penal or civil, it must meet the due process requirements of the 14th Amendment.

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[3]See/C.J.S. Appeal and Error, Sec. 352, p. 1184.

The court went on on page 402 to say:

> . Whatever label be given the 1860 act, there is no doubt that it provides the state with a procedure for depriving an acquitted defendant of his liberty and his property. Both liberty and property are specifically protected by the 14th Amendment against any state deprivation which does not meet the standard of due process and this protection is not to be avoided by the simple label a state chooses to fasten upon its conduct or its statute.

The Giacco decision goes on to say:

> It is established that a law fails to meet the requirements of the due process clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits.

The Court went on to say at page 403:

> Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that the courts must enforce. This state act as written does not even begin to meet this constitutional requirement. The state contends that even if the act would have been void for vagueness as it was originally written, subsequent state court interpretations have provided standards and guides that cure the former constitutional deficiencies. We do not agree. (Emphasis supplied.)

In the case of Jordan v. DeGeorge, 341 U.S. 223, 230, 71 S.Ct. 703, 95 L.Ed. 886, Chief Justice Vinson on page 230 takes the criminal test for "due notice" and applies it to a civil statute, and states as follows:

> The essential purpose of the "void for vagueness" doctrine is to warn individuals of the criminal consequences of their conduct. Williams v. United States, 341 U.S. 97, decided April 23, 1951; Screws v. United States325 U.S. 91, 103-104 (1945). This Court has repeatedly stated that criminal statutes which fail to give due notice that an act has been made criminal before it is done are unconstitutional deprivations of due process of law. Lanzetta v. New Jersey, 306 U.S. 451 (1939); United States v. Cohen Grocery Co., 255 U.S. 81 (1921). It should be emphasized that this statute does not declare certain conduct to be criminal. Its function is to apprise aliens of the consequences which follow after conviction and sentence of the requisite two crimes.
>
> Despite the fact that this is not a criminal statute, we shall nevertheless examine the application of the vagueness doctrine to this case ... . The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. Connally v. General Construction Co., 269 U.S. 385 (1926). (Emphasis supplied.)

Nor can the Nebraska Supreme Court ignore the mandate of Griffin v. Illinois, supra, which requires due process in this situation.

These are identical situations to what these appellants and many others have been subject to by the previous rulings of the Nebraska Supreme Court.

The question presented is so substantial as to require plenary consideration with briefs on the merits and oral arguments.

CONCLUSION

This appeal raises an issue of fundamental importance to our system of justice. This Court should not ignore the numerous cases wherein the Supreme Court of the State of Nebraska has in effect summarily dismissed appeals which comply with the mandate of Section 25-1912, by saying that they have by subsequent court decisions,

in effect, expanded the words, "and no other matters shall be deemed jurisdictional", of the statute to include the necessity of filing a motion for new trial.

The opening words of Section 25-1912,

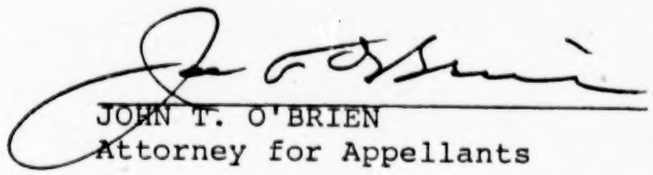
> The proceedings to obtain a reversal, vacation or modification of judgments and decrees rendered or final orders made by the district court, including judgments and sentences upon conviction for felonies and misdemeanors under the criminal code shall be ... (emphasis supplied),

are clear and easily understood until you find that you have been torpedoed because they are incomplete, in that they do not tell you that 183 pages earlier in the same code at page 584 there is another statute, 25-1143, entitled "New Trial," and in the annotations thereunder (not in the statute itself), you are apprised that the Supreme Court of Nebraska has decided that you get no real appeal unless you have filed a motion for a new trial.

These appellants and at least twenty-two others (as set out in the annotations)

have been thereby punished and deprived of their constitutional rights, and this Court should not permit it to continue. Section 25-1912 is repugnant to the due process clause and the privileges and immunities clause of the 14th Amendment. Plenary consideration should be permitted.

Respectfully submitted,



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APPENDIX "A"

NEBRASKA STATE BANK V. DUDLEY

NO. 42077 Filed May 1, 1979

1. Constitutional Law: Appeal and Error.

Appellate review in civil cases is not a fundamental right guaranteed by either the due process or privileges and immunities clauses of the Fourteenth Amendment to the Constitution of the United States.

2. Appeal and Error.

Where the right to appellate review is granted by law, it must be afforded in a nondiscriminating manner.

3. Constitutional Law: Legislature: Appeal and Error.

Article I, section 24, of the Nebraska Constitution, does not bar either the Legislature or this court from making reasonable rules and regulations governing review on appeal.

Heard before Krivosha, C. J., Clinton, and Hastings, JJ., and Stuart, District Judge, and Kuns, Retired District Judge.

CLINTON, J.

This is the third appearance of this cause in this court. Nebraska State Bank v. Dudley, 194 Neb. 1, 229 N.W. 2d 559; 198 Neb. 132, 252 N. W. 2d 277. At the last trial in the District Court for Dakota County, which involved only the defendants' counterclaim against the plaintiff, the jury rendered a verdict for the plaintiff and judgment was entered thereon. No motion for a new trial was filed within 10 days after the verdict as required by statute. Secs. 25-1143, 25-1144, R.R.S. 1943; Parker v. Christensen, 192 Neb. 117, 219 N.W.2d 235. At the time of the filing of a timely notice of appeal from the judgment, the attorney for the defendants filed a late motion for a new

trial, as well as an application to permit its filing. The affidavit in support of the motion to permit late filing alleges the defendants' attorney, a member of the Iowa bar, not admitted to practice in Nebraska, was ignorant of Nebraska law pertaining to the effect of failure to file a motion for new trial; the defendants were thus unavoidably prevented from filing a timely motion for new trial; and therefore late filing should be allowed as provided by section 25-1143(1), R.R.S. 1943. The District Court denied the motion.

The defendants now seek to escape the consequences of the failure, i.e., the limited review availabe (sic) in this court under such circumstances, by attacking the constitutionality of section 25-1912, R.R.S. 1943, claiming (1) It is unconstitutionally vague and therefore it violates the due process clause of the

Fourteenth Amendment to the Constitution of the United States; and (2) it violates the privileges and immunities clause of the Fourteenth Amendment to the Constitution of the United States. The defendants' contentions are not meritorious and the judgment is affirmed.

Section 25-1912, R.R.S. 1943, insofar as is pertinent, reads as follows: "The proceedings to obtain a reversal, vacation or modification of judgments and decrees rendered or final orders made by the district court, . . . shall be by filing in the office of the clerk of the district court in which such judgment, decree or final order was rendered, within one month after the rendition of such judgment or decree, or the making of such final order, or within one month from the overruling of a motion for a new trial in said cause, a notice of intention to prosecute such appeal . . . and, except as otherwise provided in section 29-2306,

by depositing with the clerk of the district court the docket fee required by law in appeals to the Supreme Court. . . . Except as otherwise provided in Section 29-2306, an appeal shall be deemed perfected, and the Supreme Court shall have jurisdiction of the cause when such notice of appeal shall have been filed, and such docket fee deposited in the office of the clerk of the district court, and after being so perfected no appeal shall be dismissed without notice, and no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional." The statutes pertaining to new trial applicable here are sections 25-1142 and 25-1143, R.R.S. 1943. The first section defines new trial and states the grounds therefor. Section 25-1143.R.R.S. 1943, insofar as pertinent here, reads: "The application for a new trial must be made,

within ten days, either within or without the term, after the verdict, report or decision was rendered, except (1) where unavoidably prevented. . . ." Section 25-1144, R.R.S. 1943, prescribes the form of the motion.

Defendants argue they were misled because section 25-1912,R.R.S. 1943, says: ". . . no step other than the filing of such notice of appeal and the depositing of such docket fee shall be deemed jurisdictional." They further complain that, if one reads the statutes pertaining to a motion for new trial, one cannot tell the effect of a failure to file a motion unless the reader goes further and examines the cases which determine that effect.

The pertinent provisions of section 25-1912, R.R.S. 1943, are not at all vague in the ordinary sense of the term; contrariwise, they are perfectly clear. The defendants took the necessary juris-

dictional steps to vest jurisdiction in this court and we do have jurisdiction. By failing to file a motion for a new trial and have it ruled upon, they failed to preserve for review trial errors. Nebraska Children's Home Soc. v. Collins, 195 Neb. 531, 239 N.W. 2d 258. In a law action where no motion for new trial is filed, this court on appeal will examine the record only for the purpose of determining whether or not the judgment is supported by the pleadings.

The defendants' claim of vagueness thus rests upon the premise that everything one needs to know to perfect an appeal and preserve trial errors and to effectively bring all issues before this court must, to insure due process under the Fourteenth Amendment to the Constitution of the United States, be set forth in one section of the statutes.

They cite no authority which so holds and we can find none.

Implicit in the defendants' position is the claim they have been denied due process because they are deprived of the right of appeal under the Constitution of the United States. The Supreme Court of the United States, up to this time, has never found that a right of appeal in a civil matter is inherent in the right of due process of law, but has held otherwise. National Union v. Arnold, 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46; Ohio v. Akron Park District, 281 U. S. 74, 50 S.Ct. 228, 74 L.Ed. 710; Luckenback Steamship Co. v. United States, 272 U. S. 533, 47 S.Ct. 186, 71 L.Ed. 394; Nowak, Rotunda & Young, Constitutional Law, p. 499. Where the right of appeal is granted by law, due process requires only that the right be subject to exercise in a nondiscriminatory fashion. National Union v.

Arnold, supra.

In Life & Casualty Ins. Co. of Tennessee v. Womack, 228 Ala. 70, 151 So. 880, the Supreme Court of Alabama was confronted with a contention similar to that made here. The petitioner there failed to properly preserve in the trial court questions for review in the Supreme Court. He contended on appeal that due process under the Fourteenth Amendment required that nonetheless the Supreme Court of Alabama review all questions raised on the appeal. The court simply said: "Such position is untenable. . . . Due process of law is provided when the party is given full opportunity to present the questions of law and fact in the trial court, with the right to reserve questions for review, and have them reviewed by the appellate courts. All this is provided for by law in an orderly administration of justice."

Although the defendants do not claim any violation of their rights under our own Constitution, we take note of the fact that Article I, section 24, provides: "The right to be heard in all civil cases in the court of last resort, by appeal, error, or otherwise, shall not be denied." We have held on numerous occasions that section 24 does not prevent the Legislature or this court from making reasonable rules and regulations for a review of a case on appeal. Schmidt v. Boyle, 54 Neb. 387, 74 N.W. 964; Barney v. Platte Valley Public Power and Irrigation District, 144 Neb. 230, 13 N.W. 2d 120; In re Estate of Kothe, 131 Neb. 531, 268 N.W. 464; In re Estate of Mathews, 125 Neb. 737, 252 N.W. 210; Paper v. Galbreth, 123 Neb. 841, 244 N.W. 896; School District v. Traver, 43 Neb. 524, 61 N.W. 720.

The contention that section 25-1912, R.R.S. 1943, constitutes a violation of the privileges and immunities clause of

the Fourteenth Amendment is likewise without merit. That clause is: "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States." What has already been said really answers the contention relative to "privileges or immunities." The design of the privileges and immunities clause was to insure that no state could treat a citizen of the United States, with respect to certain enumerated fundamental rights, which do not include appellate review, any differently than it treated its own citizens. Slaughter-House Cases, 83 U.S. (16 Wallace) 36. 21 L.Ed. 394 (1872). The original particular design of the privileges and immunities clause was to preserve those rights established by the Civil Rights Act and prohibit the states from violating such rights. See Raoul Berger, Government

by Judiciary, C. 3, The "Privileges or Immunities of a Citizen of the United States, " p. 37.

The pleadings support the judgment.

AFFIRMED.

KRIVOSHA, C. J., concurring.

I am in full agreement with the majority opinion in this case. I add this concurring opinion solely for the purpose of highlighting a matter which I believe deserves particular attention. In this case the record indicates that defendants' Iowa attorney was joined by Nebraska counsel. The record further indicates that Nebraska counsel's name appeared on the various pleadings and on the briefs filed in this court. Yet Nebraska counsel did not appear in this court at the time of oral argument, nor does the record indicate when, if at all, Nebraska counsel participated in this matter in the trial court. It is obvious that had Nebraska counsel been more actively

involved in the trial of this case, Iowa counsel might not have failed to timely file a motion for new trial.

The purpose of resident counsel joining with nonresident counsel is obvious. It is to insure that the nonresident counsel will be associated with a counsel involved in the litigation who is knowledgable and familiar with the laws and practices of this state. By permitting his name to be affixed to a pleading or brief, a resident lawyer represents to this court that he is a part of the litigation and a counsel of record. Accordingly, he should be held accountable for the transaction of the litigation to the full extent as if there were no nonresident counsel. A resident lawyer should not permit his or her name to be affixed to pleadings or briefs unless he or she intends to be involved in the litigation and familiar with the actions taken by nonresident counsel. The failure

to properly perform in a case in which counsel's name appears may give rise to subsequent disciplinary action by reason of counsel failing to act in accordance with the Code of Professional Responsibility as adopted by this court.

APPENDIX "B"

IN THE DISTRICT COURT OF NEBRASKA

IN AND FOR DAKOTA COUNTY

NEBRASKA STATE BANK,

Plaintiff-Appellee,

vs.

CHARLES R. DUDLEY and
DELORES S. DUDLEY,

Defendant-Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT

OF THE UNITED STATES

Notice in furtherance of Rule 10 of the Supreme Court Rules is hereby given that Charles R. Dudley and Delores S. Dudley, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of Nebraska dated May 1, 1979, affirming the District Court, which judgment in effect denied these appellants their constitutional right

to full appeal of the errors made by the trial court.

This appeal is taken pursuant to 28 U.S.C. 1257 (2).

/s/ John T. O'Brien
O'BRIEN & GALVIN
922 Douglas Street
Sioux City, Iowa 51102
712/255-0147
Attorney for Charles R. Dudley and Delores S. Dudley, Defendants-Appellants

PROOF OF SERVICE BY ACKNOWLEDGEMENT OF SERVICE AS PROVIDED IN SUPREME COURT RULE 33

I, David R. Crary, counsel of record for the Plaintiff-Appellee, the Nebraska State Bank, hereby acknowledge receipt of three copies of foregoing Notice of Appeal to the Supreme Court of the United States this 18th day of July, 1979.

s/s David R. Crary

I, Sandra K. Inkster, as co-counsel of record for the Plaintiff-Appellee, The Nebraska State Bank, hereby acknowledge receipt of three copies of foregoing Notice of Appeal to the Supreme Court of the United States this 18th day of July, 1979.

/s/ Sandra K. Inkster

APPENDIX "C"

Case No. 8568

Case No. 8653

JUDGMENT ON VERDICT

(Filed March 29, 1978)

NOW, on this 7th day of March, 1978, this matter came on for trial upon Defendants' Counterclaim filed herein against the Plaintiff. Present in court were the parties and their attorneys, and also the following named persons as jurors, to-wit: Carl Stolze, Loraine Reifenrath, Milo Birkley, Daryle Benson Jeanne Carstens, Petronilla Rasmussen, Paul Foreshoe, Duane Nelson, Wilbur Lamp, Betty Bobier, Nancy Cakebread and Mervin Gerch, who were duly impaneled and sworn according to law, and having heard the testimony, the argument of counsel, and the instructions of the court, retired in charge of the bailiff for deliberation, and on the 8th day of March, 1978, returned

their verdict for the Plaintiff, Nebraska State Bank.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED by the Court that the Defendants' Counterclaim be dismissed with prejudice and that the costs of this action be taxed to the Defendants in the sum of $673.84.

BY THE COURT:

/s/ L.W. Kelly Jr.
District Judge

APPENDIX "D"

Case No. 8568

O R D E R

(Filed July 7, 1978)

NOW, to-wit, on this 27th day of June, 1978, Defendants' "Motion to Permit Late Filing of Motion For New Trial" and "Motion For New Trial" came on for hearing, and the same were submitted on the pleadings and the Affidavit filed by Mr. Don O'Brien, Defendants' attorney.

The Court being duly advised finds that the "Motion To Permit Late Filing Of Motion For New Trial" is overruled, and the "Motion For New Trial" dismissed for the reason it was filed out of time.

IT IS THEREFORE ORDERED that the "Motion To Permit Late Filing of Motion For New Trial" be and the same hereby is overruled, and the "Motion For New Trial" filed herein be and the same

hereby is dismissed for reason it was filed out of time.

By the Court:

/s/ L. W. Kelly, Jr..
District Judge